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CHARLES ELMORE CROPLEY

No. 12, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

UNITED STATES OF AMERICA, *Plaintiff*

v.

STATE OF CALIFORNIA

MOTION FOR LEAVE TO INTERVENE

JAMES E. WATSON
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BATAVIA TIMES, LAW PRINTERS,
BATAVIA N. Y.
CHARLES W. WARDEN, WASHINGTON REPRESENTATIVE,
TOWER BUILDING

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Supreme Court of the United States

OCTOBER TERM, 1945.

No. 12, Original.

UNITED STATES OF AMERICA, *Plaintiff*

vs.

STATE OF CALIFORNIA

MOTION FOR LEAVE TO INTERVENE.

Robert E. Lee Jordan moves for leave to intervene as a party plaintiff in this action in order to assert the matters set forth in his proposed complaint, of which a copy is hereto attached, on the grounds that he has a substantial interest in the subject matter of the action, that the representation of his interest by the original plaintiff is or may be inadequate; that he will be bound by a judgment in the action, that his interest and the main action have questions of law and fact in common, and that his intervention will not to any extent delay or prejudice the adjudication of the rights of the original party.

Robert E. Lee Jordan

ROBERT E. LEE JORDAN

October, 1946.

Waters & Waters

Attorneys for Petitioner

Statement in Support of Motion.

Leave to intervene in the action by the United States of America against the State of California, Original 12, is asked by your petitioner upon the grounds that the complaint and pleadings do not appear to fully place before this Court for adjudication the entire interest of the United States of America or the interests of your petitioner, a citizen of the United States and a registered applicant for leases for the development of oil and gas in the submerged lands off the coast of California, which your petitioner filed with the Department of the Interior and which applications fully comply with the rules and regulations of the Department of the Interior and the provisions of the Oil Land Leasing Act of 1920 (41 Stat. L. 437, as amended, 49th Stat. L. 674). Sanford vs. Sanford, 139 U. S. 642, Kern Oil Co. vs. Clarke, 30 Land Dec. 556. Your petitioner believes his right to intervene is specifically set out under the Federal rules of Civil Procedure, Rule 24. Your petitioner's interest in the pending litigation is founded upon the fact that the U. S. Government owns the submerged lands, that they are a part of the public domain, and that the Government has never granted them to the State of California and are subject to leasing by the Government.

The complaint and pleadings filed by the U. S. Government while alleging generally, ownership of submerged lands and minerals, asks only for a declaration of rights. Your petitioner asks for a confirmation of the ownership and title to the submerged lands and minerals therein to be declared in the U. S. Government.

In support of this proposition your petitioner cites the Treaty of Guadalupe Hidalgo (Vol. IX, U. S. Stat. L. 452), by and under which all of the territory out of which the

State of California was later formed, was ceded to the United States Government in 1848 and not to California. California did not then exist either as a state or territory. That the Mexican Government claimed and exercised proprietary ownership of the submerged lands off the coast of California and disposed of parts of it by grants. This right of ownership and transfer of title to submerged lands by Mexico has been recognized and confirmed by this Honorable Court in the case of *United States vs. Coronado Beach Company*, 255 U. S. 472. California had ownership of no land at the time of its admission to the Union. The grant of 500,000 acres by Act of Congress to the State of California could not be availed of, until after the territory had been surveyed. This survey was not completed until several years after California was admitted to statehood. The grant was subject to the confirmation of prior grants made by Mexico to lands within the territory ceded, and further subject to selection by the legislature of the State of California after the Mexican grants had been confirmed or rejected. (U. S. C. A. Title 43, Chap. 20, Par. 857-865, *Doll vs. Meacher*, 16 Cal. 295). That California through its legislature never selected any submerged lands as part of the quantity (500,000 acres) included in the Congressional grant. This fact is borne out by the records of the Department of the Interior.

Under the Constitution, Congress alone has the power to dispose of the land of the Government (U. S. Constitution Art. 4, Para. 3), and Congress has never granted any submerged lands to California as tide lands or submerged lands. The Enabling Act, admitting California to statehood in 1850, does not by its terms convey any title to any lands owned by the Government to the State of California.

To pass title, there must be a conveyance, grant, or patent, nothing passes by implication. (*Gt. Northern Ry. vs. U. S.*, 32 Fed. Supp. 654; *U. S. vs. Fitzgerald*, 15 Pet. 421; *Hicks vs. Bell*, 3 Cal. 272; *R. Co. vs. Litchfield*, 23 How. 66). Under none of the foregoing situations did California acquire title to the submerged lands off the coast of California from the low tide mark on the shore out to the three-mile-limit. Reference is made to the map marked "Exhibit 1," hereto attached, which is a photostatic copy of the original map signed by the members of the Boundary Commission of the United States and Mexico, and which sets the southern boundary between Mexico and the territory ceded to the United States Government. The original of this map is in the Archives of the United States, as part of the records of the State Department. This map clearly indicates that the boundary line agreed upon between the two countries extended out into the ocean and that all of the submerged lands north of that line were included in the property ceded to the United States.

The complaint of the United States Government alleges, under Article V, that the State of California has leased parts of the submerged lands and has secured royalties for said leases and has retained the proceeds thereof. The complaint fails to allege that in 1929 the State of California passed an Act (Stat. 1929, p. 944), providing that no prospecting permits or leases for oil and gas in tide lands or lands in the bed of the ocean should be granted. It is the opinion of your petitioner that California by this Act admitted that it had no right or claim to title or ownership in the submerged lands or the mineral deposits therein off the coast of California.

The complaint and pleadings of the United States Government excludes harbors and bays and thus raises a

question as to what portion of the submerged land along the coast of California is covered by the complaint and pleadings of the Government. It is for the protection of the Government's interest as well as that of your petitioner that all possible confusion on this point should be eliminated and that the action to confirm title, should embrace all of the submerged lands along the coast between the northern and southern boundaries of the State of California. The shore line as it existed at the time of the cession of the territory by Mexico to the United States Government in 1848 is the true line from which the extension of three nautical miles oceanward should be measured; all submerged lands within those limits are by the terms of the treaty, as established by governmental survey, the property of the United States Government. The map marked "Exhibit 2" hereto attached, shows a portion of the coast line where now are located the cities of San Pedro and Long Beach, and indicates the extent of the area of submerged lands at those places. The ownership of all this submerged land should be demanded by the suit in the instant case. The harbors of these two cities have been improved by the Government. Breakwaters have been constructed and parts of the submerged lands have been filled in and made a part of the upland. This filled in and/or reclaimed land, in the harbors, is also the property of the United States. The fact that these harbors have been artificially enclosed does not divest the Government of title to the submerged and filled in land upon the submerged land in these harbors.

The ownership of the submerged lands in the harbor of Long Beach, California, is of vital concern to the United States Government as well as your petitioner. The question of what is the difference between an artificially enclosed harbor and a naturally enclosed harbor, and the

ownership of the land within them needs judicial construction in the instant case. Does the title to submerged lands in an artificially enclosed harbor come within the scope of the Government's complaint and pleadings? Your petitioner fears not. It is, therefore, necessary in the interests of the Government and your petitioner that the complaint and pleadings should specifically include all submerged lands within artificially enclosed harbors. The greatest known deposit of oil on the Pacific Coast lies within the outer harbor of Long Beach and your petitioner discovered the geological structure of this deposit and filed the first application for leases on it, with the Department of the Interior in 1937. It is the contention of your petitioner that a declaration of the foregoing question is essential to a proper consideration of the Government's claim and the protection of your petitioner's interest. Your petitioner does not believe that the complaint filed by the Government sufficiently covers the interest of the Government and if the Government's interest is not fully presented, your petitioner's interest is likewise not protected.

Your petitioner submits U. S. Geodetic Map printed in 1937, of the Coast and Harbor of Long Beach, California, marked "Exhibit 3," which shows the first fill made in the harbor (marked in yellow on the map) which was an extension or construction of land over the submerged bed of the ocean. Since 1937 other fills have been made in the harbor over and on the submerged lands which are clearly indicated by the U. S. Geodetic of November 24th, 1945, marked "Exhibit 4," hereto attached, (the filled in parts being marked in yellow) which indicates that it is the hope and the intent of the City of Long Beach, by filling in portions of the outer harbor, to claim the oil deposits in the now artificially enclosed harbor of Long Beach, upon the grounds either that the oil deposit is in an enclosed harbor or that by filling in the harbor over the submerged lands, the submerged lands be-

come upland and the state or municipality has, therefore, the right to issue leases for the extraction of oil upon the filled-in land to the loss of the United States Government. Only upon this theory can California avoid the violation of the Act of 1929, which provided for the discontinuance of the issuance of leases on submerged lands for the development of oil and gas and to claim title to these filled in submerged lands and issue leases for drilling of oil upon them. The map, "Exhibit 4," shows clearly how many leases have been granted upon this filled-in land which extends out over the submerged lands, and also shows that a portion of this filled-in land extends over and covers a part of your petitioner's filing and the number of wells which have been drilled under leases issued by the State of California or its grantees upon it.

The doctrine established by a rule of the Supreme Court of California in the case of *Patton vs. City of Los Angeles,* 169 California 521, has particular application in the matter of ownership and title to land which has been filled in over tide and submerged lands. It was held in that case that the character of the land on which fills had been made, was not changed by virtue of the fills. If it was tide land and fills had been made on it, according to the ruling, the land still remained tide land. The ruling in this case was held that such land as was filled in, did not by virtue of being filled in, become a part of the upland by virtue of being joined to it, but that it was still tide or submerged land. The case also held that title to the land filled in on tide or submerged lands could not be acquired by adverse possession. These points are of extreme importance to the Government in asserting its claim to all filled-in land over and on the submerged land in the outer harbor of Long Beach. By the decision, above quoted, the land filled in on the submerged lands, does not become a part of the upland and the land notwithstanding the fills, is still held to be sub-

merged land and the State of California cannot claim title to it upon the theory of adverse possession.

It is the contention of your petitioner that the complaint and pleadings of the United States should ask for a decree covering the title to the submerged and filled-in lands along the coast of California, including that in all artificially enclosed harbors such as Long Beach, and that if this question be not presented for determination by the Court, the rights and interests of the Government and your petitioner will be prejudiced.

There are also attached maps, Exhibits Nos. 5 and 6, prepared by the State of California, No. 5 being that of the Oil Umpire of California, Mr. J. R. Pemberton, which shows that in 1937 there were no wells drilled in the territory adjacent to your petitioner's filings and that the harbor at that time conforms to the outline shown in the Geodetic Map, "Exhibit 3." Map No. 6, prepared by the Department of Natural Resources, Division of Oil and Gas of the State of California, dated November 2, 1945 confirms the overlapping of the filled-in land upon your petitioner's filing, General Land Office Serial No. 052276 and shows the number of wells which have been drilled upon your petitioner's filing and the extent of the filled land.

Your petitioner claims interest in the submerged lands in the outer harbor of Long Beach, California by virtue of being the first applicant for leases in the outer Long Beach Harbor, that his applications have been duly registered with the Department of the Interior. Your petitioner claims a vested interest and right to leases by virtue of these applications in accordance with the practice of the Department of the Interior relating to leases of the public domain. Were not the questions herein contained drawn to the attention of the court, petitioner's rights with respect to his applications would be prejudiced; that your petitioner's interests are adverse to the State of California.

Your petitioner also claims an interest in the oil and gas which is now being drained out of and from the filing which he registered with the Department of the Interior in the outer Harbor of Long Beach and that it is important to your petitioner as well as to the Government that the question of mineral rights in the submerged lands and the filled-in land which extends over the submerged lands, be determined in favor of the Government and adverse to the State of California.

The complaint of the Government alleges the ownership of minerals. The question of ownership of minerals rests upon entirely different grounds from that of confirmation of title to the submerged lands. At the time Congress granted to California 500,000 acres, school lands, and townsites, all minerals in the land were excluded, 10 Stat. L. 308, *U. S. Castillers,* 67 U. S. 17, paragraph 4; 54 Id. 369-70; *Gorman Min. Co. vs. Alexander,* 51 N. W. 346, 2 S. D. 557, 563; *Ivanhoe Min. Co. vs. Keystone Consol. Min. Co.,* 102 U. S. 167; *McDonald vs. U. S.,* 119 Fed. 821, 825. The Act of July 4, 1866, 14 Stat. L. 86, reserved all lands valuable for minerals from sale. *Mullan vs. U. S.,* 118 U. S 271, USCA Title 43, Ch. 20, para. 865; *Moore vs. Shaw,* 17 Cal. 199. It has been the policy of the Government to retain and conserve its natural resources of oil and gas This policy has been followed by numerous decisions of the Federal Courts. Under the provisions of the law and decisions, California has not the vestige of a claim to the oil and gas deposits in the public domain in California, *U. S. vs. Stand. Oil Co. of Calif.,* 107 Fed. 2nd 402, particularly after the repeal of the California Leasing Act in 1929 with respect to refusing to issue further leases on tide and submerged lands for the development of oil and gas. Leases and permits for slant hole or whipstock drilling were and are now being issued for wells to be drilled on the filled in and reclaimed

submerged land, which method is contrary to law. The wells are directed into the bed of the ocean, from the upland and filled in land and are draining the oil deposit in the submerged lands, belonging to the United States Government and the oil therein has been and is being extracted at a rate of approximately 100,000 barrels per day. This drainage has continued for the past eight years, and the Government has lost approximately 300,000,000 barrels of oil during that period of time. This drainage must be stopped without delay. The royalties from this illegal method of drilling is being paid to the lessors, the State of California, and various municipalities to the loss and damage of the United States Government and of your petitioner, as it is taking out oil from his filing. No royalties, rents, or the value of the oil drained have been or are being paid to the United States Government to its loss and damage.

Regardless of the question of title to the submerged lands there can be no question as to the ownership of the oil deposits and other minerals in the submerged land being in the United States and which by law are reserved to the Government and should be so confirmed.

The complaint and pleadings filed by the Government do not ask for any accounting for the royalties, rents or the value of the oil taken from the submerged lands received by the State of California to which the United States Government is entitled and your petitioner believes that such a claim should be made a part of the litigation in the instant case, in order that his loss and damage may be later liquidated if the interests of the Government are to be protected and the national resources of the nation conserved.

It is respectfully submitted that the motion for leave to intervene be granted.

Robert E. Lee Jordan

ROBERT E. LEE JORDAN,
Petitioner for Intervention.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 12, Original.

UNITED STATES OF AMERICA, *Plaintiff*,

v.

STATE OF CALIFORNIA,
ROBERT E. LEE JORDAN, *Intervenor*.

COMPLAINT.

The United States of America, by its Attorney General and its Solicitor General, brings this suit against the defendant, The State of California, and for its cause of action states:

I.

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

II.

The plaintiff is the owner in fee simple of all of the submerged land underlying the Pacific Ocean off the coast of California, extending from the shore line, as established by United States governmental survey as of 1848, oceanward three nautical miles, including all submerged land in artificially enclosed harbors and all land made or created by fills over and on submerged lands along the coast of Cali-

fornia subsequent to 1848 and outside of the inland waters of the State and bounded on the North and South respectively by the boundaries of the State of California.

III.

The plaintiff is the owner in fee simple of all of the minerals in the submerged land underlying the Pacific Ocean, off the coast of California, and extending from the shore line, as established by United States Governmental survey as of 1848, oceanward three nautical miles, including the minerals in all submerged land in artificially enclosed harbors and in all lands made or created by fills over and on submerged lands subsequent to 1848, along the Coast of California and outside of the inland waters of the State, and bounded on the North and South respectively by the boundaries of the State of California.

IV.

The State of California claims some right, title or interest in said lands, minerals and other things of value adverse to the United States and the intervenor.

V.

In the exercise of the rights claimed by it, the State of California has by general law, authorized the leasing of lands underlying the Pacific Ocean for the exploitation of petroleum, gas and other mineral deposits in the area in controversy and has negotiated and executed such leases with many persons and corporations too numerous to name or to make defendants to this action, and many of those persons and corporations have, in violation of the rights of the United States, entered upon the said lands and drilled wells for the recovery of petroleum, gas and other hydrocarbon substances for a long time passed. Many of those wells have been producing large quantities of petroleum, gas and other hydrocarbon substances of great value which

thed lessees of the State have taken and converted to their own uses and for which the lessees have paid to the State large sums of money in returns and royalties reserved under the leases, but neither the State or its lessees have recognized the rights and title of the United States nor have they paid to the United States either the value of the petroleum and other things of value taken from the area or any royalties thereon.

VI.

The State of California has title to no land in the State of California except that land granted it by special acts of Congress or which it may have purchased subsequent to its admission to statehood, and no interest in the minerals in the lands in controversy, which are by law reserved to the United States.

VII.

The State has frequently and publicly denied the rights, powers and title of the United States in the area and has claimed fee simple title to the area for itself and, unless the rights of the United States are established and declared by this Court, the State will continue to claim such title for itself and to exercise the rights incident to such title through its officers, agents and employees, and will continue to aid, abet and encourage others, as its lessees, to trespass upon and to take and use the minerals and other things of value in the area, in violation of the rights of the United States, from which the United States will suffer irreparable injury, for which it has no adequate remedy except by this action.

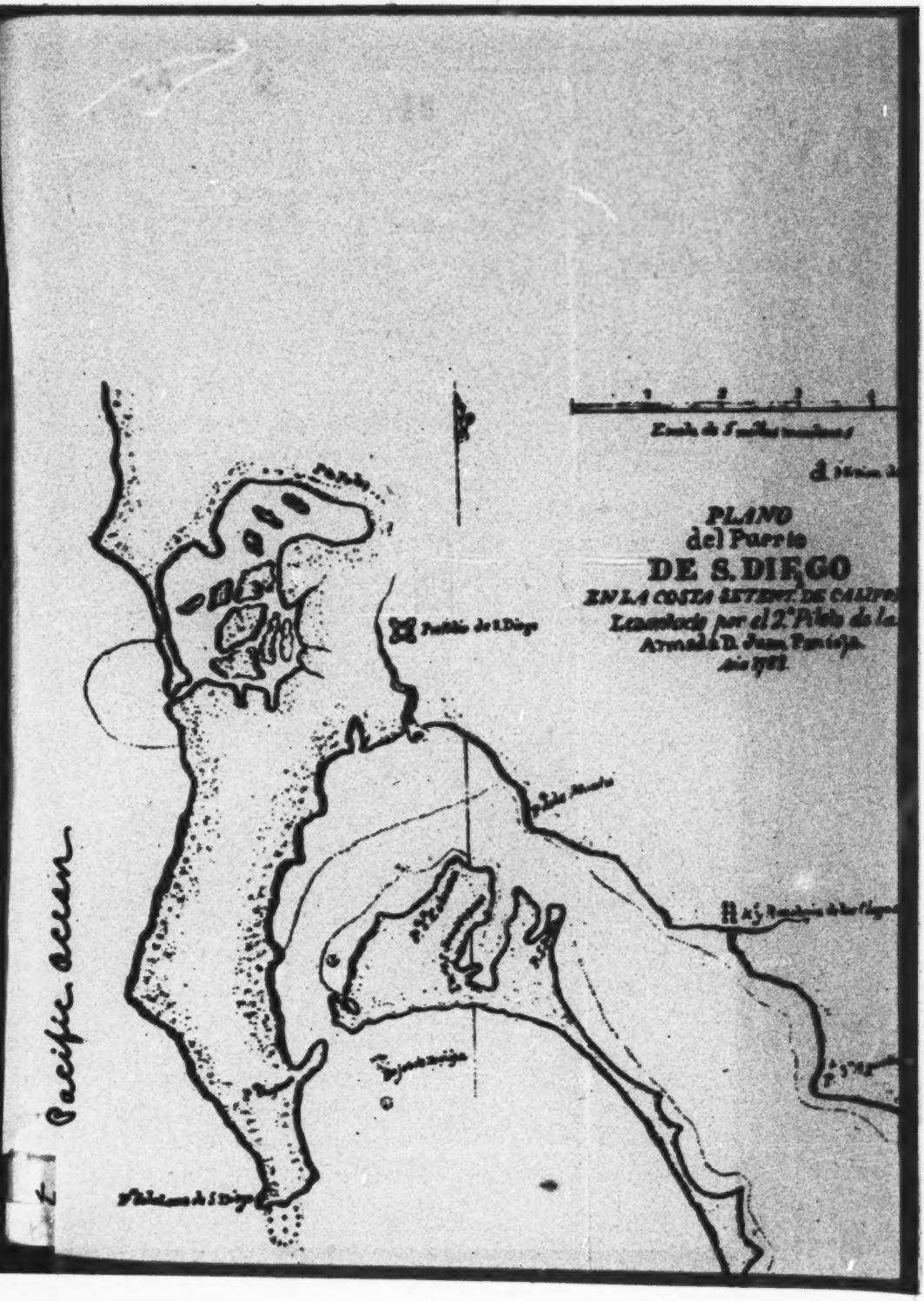
Wherefore, plaintiff prays that a decree be entered adjudging and declaring the title and ownership of all of the submerged lands off the coast of California and the min-

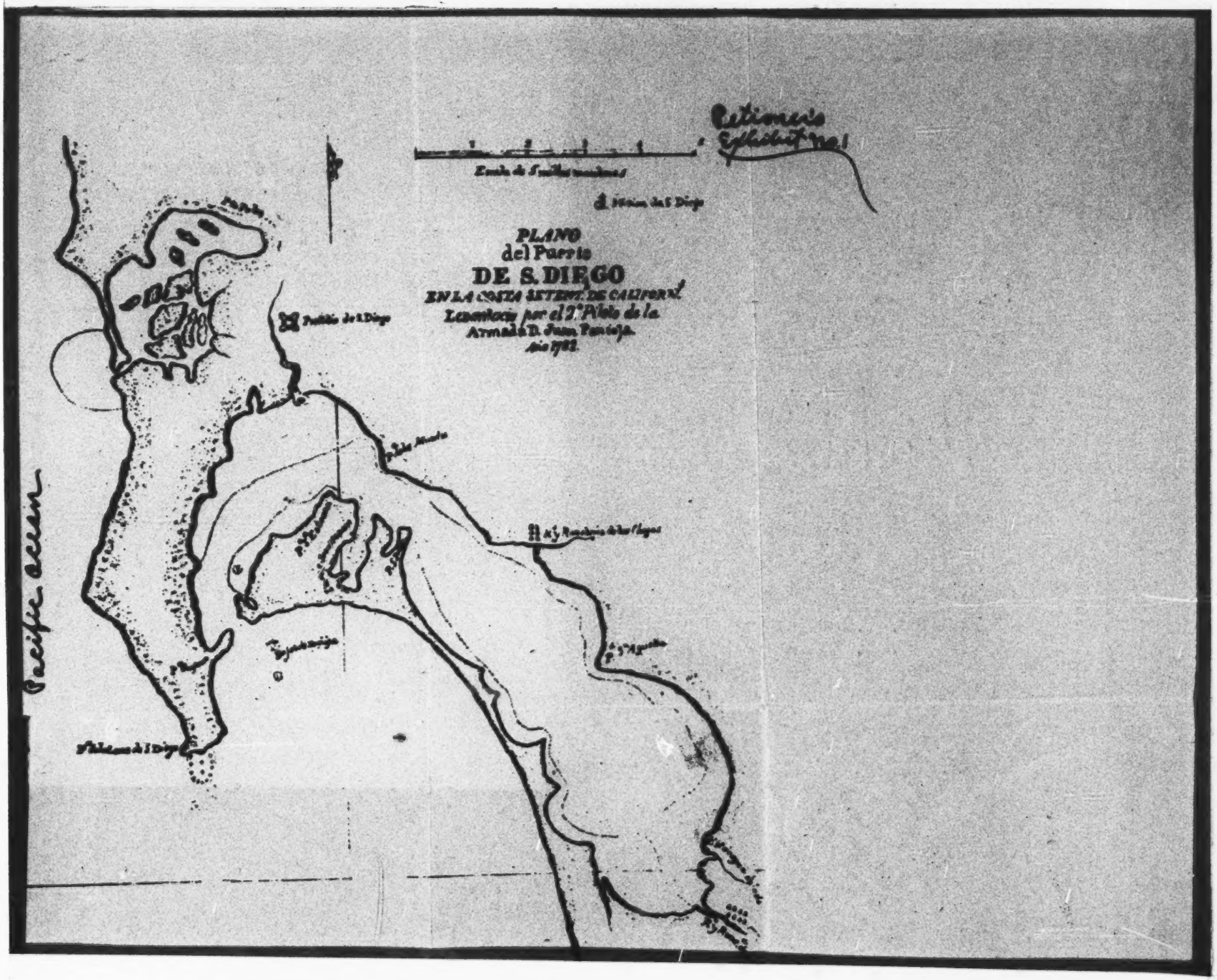
erals and other things of value therein to be the sole property of the United States and enjoining the State of California, its grantees and all others claiming under it from continuing to trespass upon the lands of the United States and from interfering with the development of the minerals therein by the United States in violation of the rights of the United States and to account to the United States for all monies taken and received by virtue of such trespass.

Robert E. Lee Jordan

ROBERT E. LEE JORDAN,
Intervenor.

Watson & Walker
Attorneys for Intervenor


PLANO
del Puerto
DE S. DIEGO
Pueblo de S. Diego
Pacific ocean


PLANO
del Puerto
DE S. DIEGO
EN LA COSTA SEPTENT.L DE CALIFORN.A
Levantado por el 2.° Piloto de la
Armada D. Juan Pantoja.
Año 1782.
Pacific ocean



This is the Plan of the Port of San Diego, referred to in the Fifth Article of the Treaty of Peace, Friendship, Limits and Settlement, between the United States of America and the Mexican Republic. Signed this day.

Witness our hands and Seals, at Guadalupe Hidalgo, this Second day of February, one Thousand eight hundred and forty-eight.

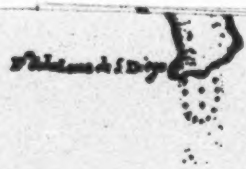
N. P. Trist. (L.S.)

Bernardo Couto (L.S.)

Mig.l Atristain (L.S.)

Luis G. Cuevas (L.S.)

Este es el plan del Puerto de San Diego, á que se refiere el artículo quinto del tratado de paz, amistad, límites y arreglo definitivo entre la República mexicana y los Estados Unidos de América, firmado en este dia. Y para que conste, lo firmamos y sellamos en la Ciudad de Guadalupe Hidalgo el dia 2 de Febrero de mil ochocientos cuarenta y ocho.



Boundary

This is the Plan of the Port of
referred to in the Fifth Article of the Trea
Friendship, Limits and Settlement, betw
United States of America and the Mo

it # 2

16

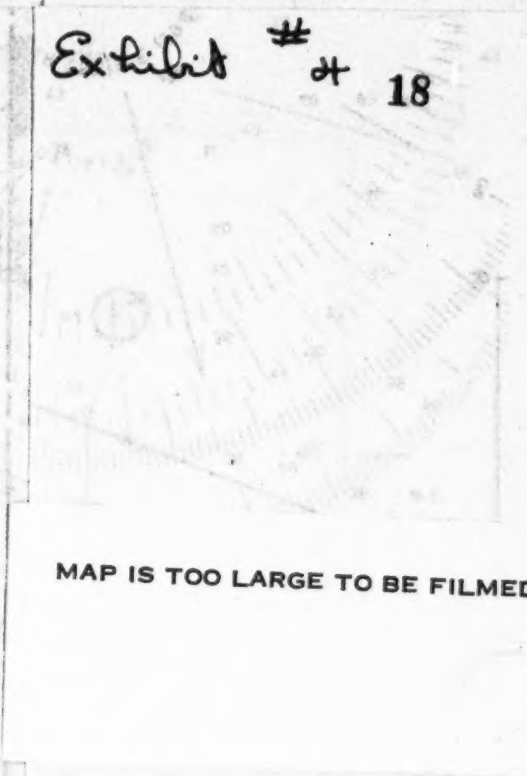
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MAP IS TOO LARGE TO BE FILMED



Exhibit # 18



MAP IS TOO LARGE TO BE FILMED

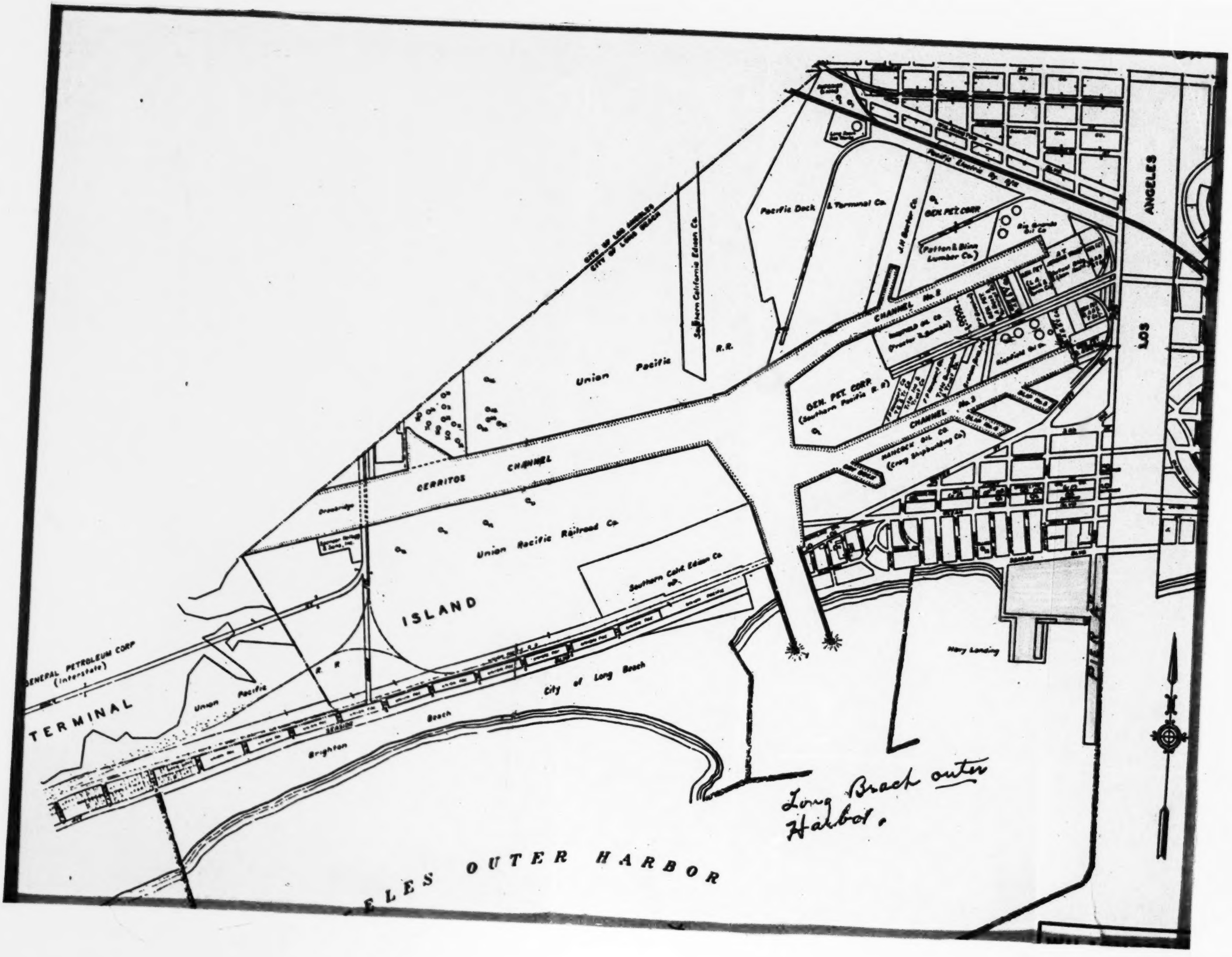
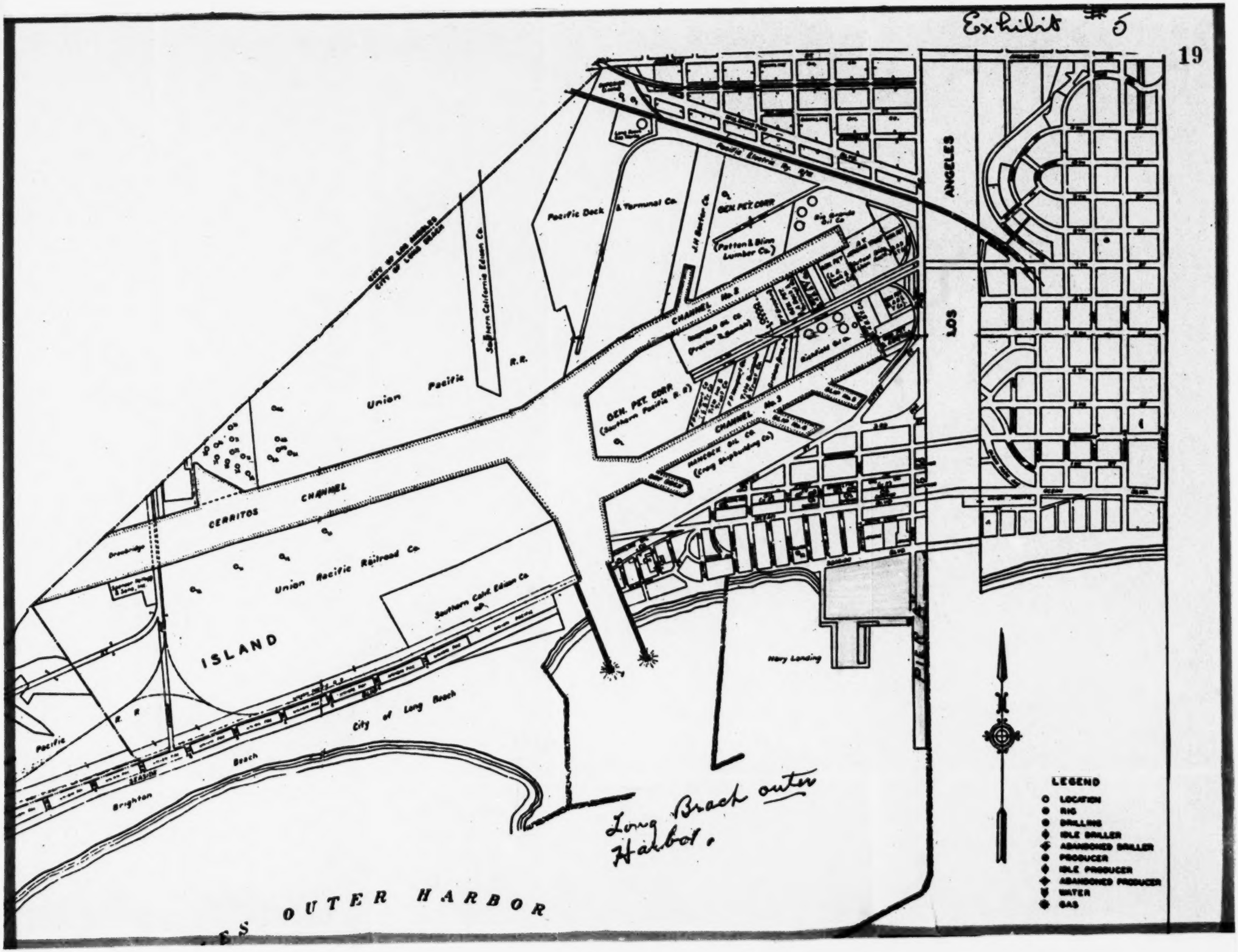
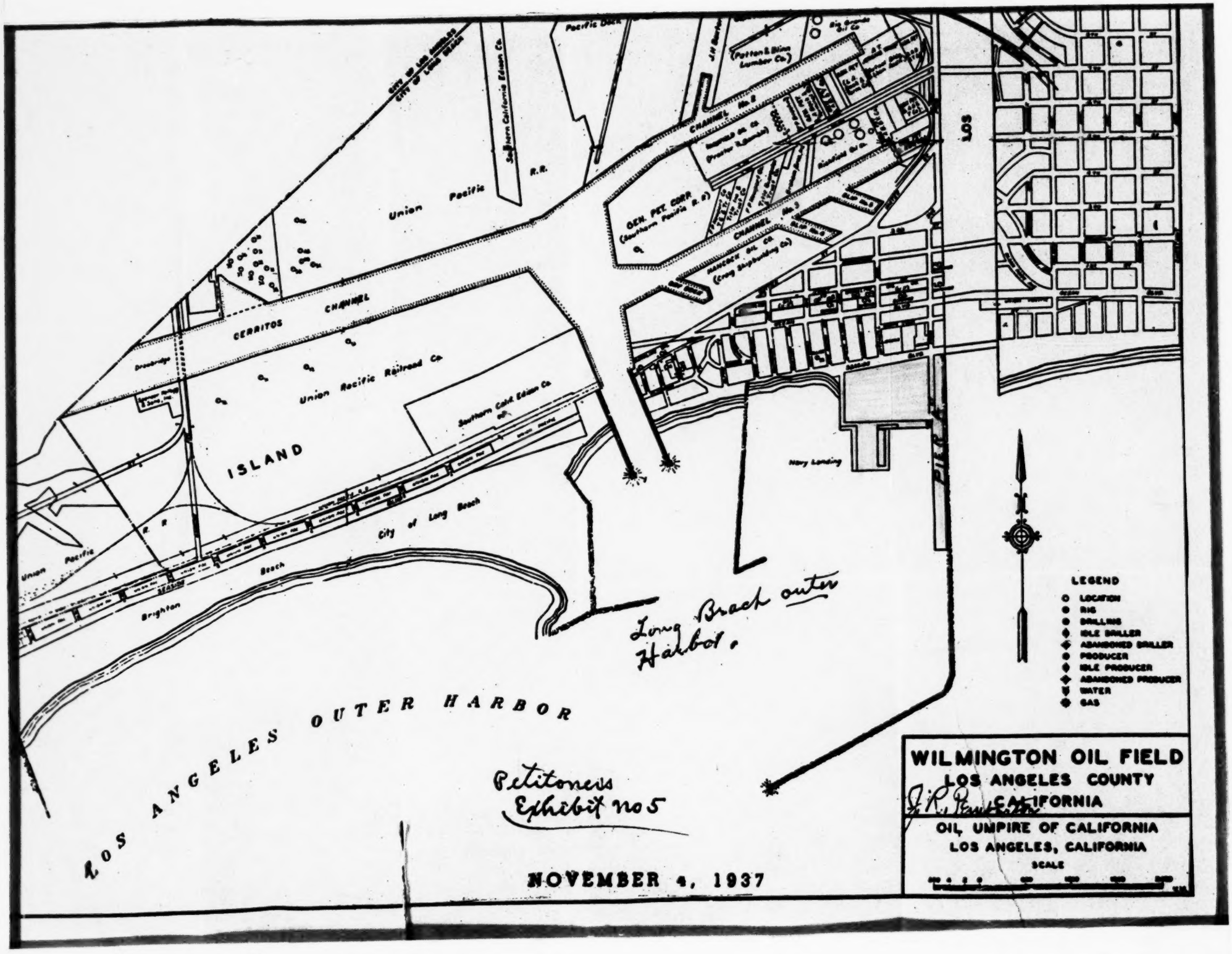
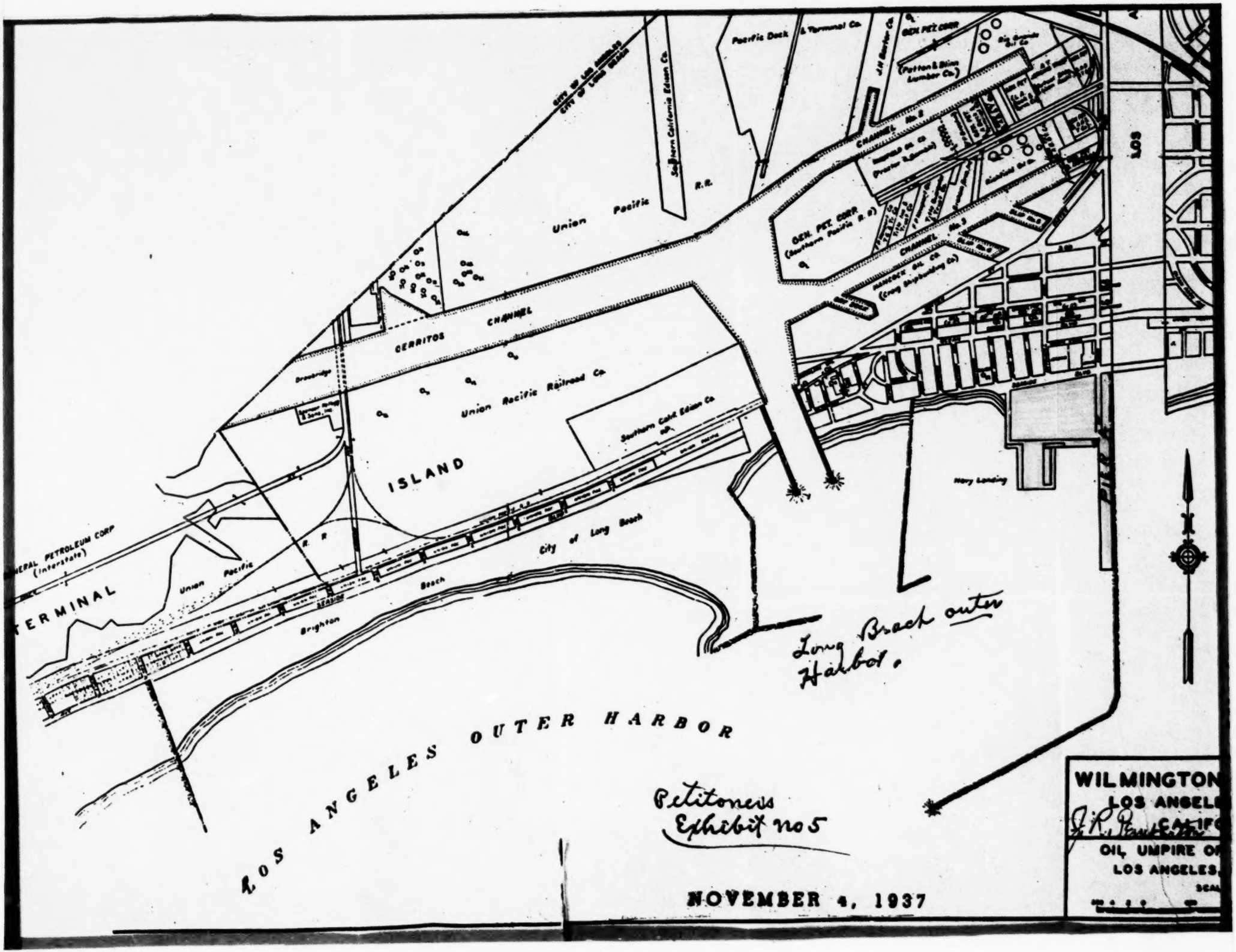

Pacific Dock & Terminal Co.
GEN. PET. CORP.
(Patton & Bliss Lumber Co.)
CHANNEL No. 2
GEN. PET. CORP.
(Southern Pacific R. R.)
CHANNEL No. 3
HANCOCK OIL CO.
(Craig Shipbuilding Co.)
Union Pacific R.R.
Southern California Edison Co.
CERRITOS CHANNEL
Union Pacific Railroad Co.
Southern Calif. Edison Co.
ISLAND
GENERAL PETROLEUM CORP.
(Interstate)
TERMINAL
Union Pacific
City of Long Beach
Beach
Brighton
Navy Landing
LOS ANGELES
Long Beach outer Harbor.
OUTER HARBOR

Exhibit #6


ANGELES
LOS
Pacific Dock & Terminal Co.
GEN. PET. CORP.
(Patton & Bliss Lumber Co.)
CHANNEL No. 2
GEN. PET. CORP.
(Southern Pacific R. R.)
CHANNEL No. 3
Union Pacific R.R.
Southern California Edison Co.
CERRITOS CHANNEL
Union Pacific Railroad Co.
Southern Calif. Edison Co.
ISLAND
City of Long Beach
Navy Landing
Pacific Beach
Brighton
LEGEND
LOCATION
RIG
DRILLING
IDLE DRILLER
ABANDONED DRILLER
PRODUCER
IDLE PRODUCER
ABANDONED PRODUCER
WATER
GAS
Long Beach outer Harbor.
OUTER HARBOR


Union Pacific
Southern California Edison Co.
R.R.
CERRITOS CHANNEL
Union Pacific Railroad Co.
Southern Calif. Edison Co.
ISLAND
City of Long Beach
Union Pacific
Beach
Brighton
Long Beach outer Harbor.
LOS ANGELES OUTER HARBOR
Petitioners Exhibit no 5
NOVEMBER 4, 1937
LEGEND
LOCATION
RIG
DRILLING
IDLE DRILLER
ABANDONED DRILLER
PRODUCER
IDLE PRODUCER
ABANDONED PRODUCER
WATER
GAS
WILMINGTON OIL FIELD
LOS ANGELES COUNTY
CALIFORNIA
OIL EMPIRE OF CALIFORNIA
LOS ANGELES, CALIFORNIA
SCALE


Pacific Dock & Terminal Co.
GEN. PET. CORP.
(Patton & Bliss Lumber Co.)
Southern California Edison Co.
R.R.
Union Pacific
CHANNEL
GEN. PET. CORP.
(Southern Pacific R.R.)
CHANNEL
GERRITOS CHANNEL
Union Pacific Railroad Co.
Southern Calif. Edison Co.
ISLAND
Navy Landing
City of Long Beach
Union Pacific
R. R.
Beach
Brighton
TERMINAL
Long Beach outer Harbor.
LOS ANGELES OUTER HARBOR
Petitioners Exhibit no 5
NOVEMBER 4, 1937
WILMINGTON
LOS ANGELES
CALIF
OIL EMPIRE OF
LOS ANGELES.



MAP IS TOO LARGE TO BE FILMED